

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JEWISH LEGAL NEWS, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION,

Defendant.

Case No. [23-cv-05064-PHK](#)

ORDER ON SUMMARY JUDGMENT

Re: Dkts. 35 and 36

This is a Freedom of Information Act case. Now before the Court are cross-motions for summary judgment from Plaintiff Jewish Legal News, Inc. (“JLN”) on the one hand, and from the Defendant, the United States Department of Education (“DOE”), on the other hand. [Dkts. 35 and 36]. The Parties filed respective opposition briefs to each other’s cross-motions and reply briefs in support of their motions. [Dkts. 36–38]. A hearing was held on the summary judgment motion and cross-motion on November 25, 2024. [Dkt. 42]. After the hearing, the Parties filed a joint stipulation and proposed order narrowing the disputes in the cross-motions for summary judgment. [Dkt. 43]. The Court has granted that stipulation. [Dkt. 44]. After carefully reviewing the briefing and all relevant documents, and after considering the Parties’ submissions and oral argument, the Court **GRANTS-IN-PART** and **DENIES-IN-PART** the cross-motions for summary judgment.

The Parties have consented to proceed before a Magistrate Judge for all purposes, including the entry of final judgment under 28 U.S.C. § 636(c). [Dkts. 6, 15].

RELEVANT BACKGROUND

On October 3, 2023, JLN filed the original complaint in this action against the DOE under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. [Dkt. 1]. JLN filed an Amended

1 Complaint on April 2, 2024. [Dkt. 21]. “JLN is an online news magazine located at
2 www.jewishlegalnews.com, that covers important debates and issues in the Jewish communities in
3 the US, Israel, and worldwide.” *Id.* at ¶ 2.

4 On August 28, 2023, JLN submitted the FOIA requests at issue here. *Id.* at ¶ 29 and Exhibit
5 B. Generally, JLN’s FOIA requested eight categories of documents from the DOE related to how
6 that agency handles allegations of antisemitism at colleges and universities, including complaints
7 from April 1, 2023, to May 30, 2023, and the status of related investigations. *Id.* JLN also requests
8 documents on the details of the DOE’s strategy for combating campus antisemitism and how Title
9 VI should protect Jewish students from discrimination. *Id.* JLN also requested “[a]ny other FOIA
10 requests and responses regarding complaints or allegations of antisemitism on campus.” *Id.* In the
11 FOIA request, JLN indicated the material sought is within the date range from August 1, 2021, to
12 August 1, 2023. *Id.*

13 “On August 28, 2023, Defendant sent an email assigning the request 23-02670-F.” *Id.* at
14 ¶ 32 (citation omitted). The following day, “Defendant sent a letter seeking clarification on the date
15 range.” *Id.* at ¶ 33 (citation omitted). The same day, “Plaintiff clarified the date range as 8/1/21 to
16 8/1/23. Plaintiff narrowed the request for all antisemitism complaints to a range of 4/1/23 to 5/30/23
17 only.” *Id.* at ¶ 34 (citation omitted). The following day, Defendant sent a letter stating that the
18 Request had been updated to the status of ‘In Progress.’” *Id.* at ¶ 35 (citation omitted).

19 “On September 28, 2023, Defendant sent another letter[]” which stated, “[a]t this time, your
20 request is still being processed. We appreciate your patience as we work diligently to process your
21 request. Please be advised that the average request processing time is approximately 185 business
22 days. As this is an average, your request may take more time or may be processed sooner.” *Id.* at
23 ¶ 36 (citation omitted).

24 On March 11, 2024, “Defendant stated that it had completed production of documents it
25 believed were responsive to Plaintiff’s requests.” *Id.* at ¶ 38.

26 In the Amended Complaint, JLN asserts four causes of action: (1) “Failure to Comply with
27 Statutory Deadlines;” (2) “Pattern and Practice Violation of FOIA;” (3) “Use of Invalid
28 Exemptions;” and (4) “Failure to Reasonably Segregate.” *Id.* at 9–12. On May 6, 2024, the DOE

1 filed its Answer to the Amended Complaint. [Dkt. 23].

2 On August 16, 2024, the DOE filed the instant motion for summary judgment. [Dkt. 35].
3 On August 30, 2024, JLN filed its opposition brief to the DOE's motion for summary judgment,
4 and also cross-moved for summary judgment. [Dkt. 36]. On September 13, 2024, the DOE filed
5 its reply brief in support of its summary judgment motion, combined with its opposition to the cross-
6 motion for summary judgment. [Dkt. 37]. On September 20, 2024, JLN filed its reply brief in
7 support of its cross-motion for summary judgment. [Dkt. 38]. On November 22, 2024, the Court
8 held a hearing on the cross-motions for summary judgment. [Dkt. 42]. At the hearing, the Parties
9 agreed to meet and confer in an attempt to resolve the disputes. *Id.* The Parties filed a joint
10 stipulation with a proposed order resolving some, but not all disputes. [Dkt. 43]. The Court has
11 granted that stipulation. This Order resolves the remaining unresolved disputes.

12 LEGAL STANDARD

13 FOIA cases are typically decided on motions for summary judgment. *Our Children's Earth*
14 *Found. v. Nat'l Marine Fisheries Serv.*, 85 F. Supp. 3d 1074, 1081 (N.D. Cal. 2015) (citation
15 omitted). Entry of summary judgment is proper "if the movant shows that there is no genuine
16 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.
17 Civ. P. 56(a).

18 "To carry their summary judgment burden, agencies are typically required to submit an index
19 and 'detailed public affidavits' that, together, 'identify the documents withheld, the FOIA
20 exemptions claimed, and a particularized explanation of why each document falls within the claimed
21 exemption[.]'" *Id.* (citation omitted). These submissions are typically referred to as a *Vaughn* index,
22 and they must be from "affiants who are knowledgeable about the information sought[.]" and
23 "detailed enough to allow court[s] to make an independent assessment of the government's claim
24 of exemption." *Id.* *Vaughn* indices, however, are not appropriate in all FOIA cases. *Minier v. Cent.*
25 *Intel. Agency*, 88 F.3d 796, 804 (9th Cir. 1996). "Specificity is the defining requirement."
26 *Ecological Rts. Found v. U.S. Env't Prot. Agency*, 607 F. Supp. 3d 979, 993 (N.D. Cal. 2022), *aff'd*,
27 No. 22-15936, 2023 WL 4342100 (9th Cir. July 5, 2023) (citation omitted).

28 Agency FOIA affidavits are presumed to be made in good faith and should be accorded

substantial weight. *Id.* (citation omitted). “[T]o prevail on summary judgment, an agency need only establish that the justification for invoking a FOIA exemption appears logical, which it may achieve through affidavits that describe the justification with reasonable specificity.” *Id.* (citing *Hamdan v. U.S. Dep’t of Just.*, 797 F.3d 759, 769, 774 (9th Cir. 2015)).

DISCUSSION

The cross-motions for summary judgment address four general issues in dispute: (I) whether the DOE properly withheld and redacted certain documents under a corresponding FOIA exemption; (II) whether the DOE has a pattern and practice of failing to meet the FOIA statutory deadline; (III) whether the DOE failed to meet the statutory deadline in this specific instance (including whether DOE failed to make a determination within the deadline and failed to conduct a reasonable search); and (IV) whether the DOE failed to reasonably segregate documents. [Dkts. 35 and 36].

I. FOIA EXEMPTIONS

A. Challenges to previous FOIA responses

Standing to sue is “an essential and unchanging part of the case or controversy requirement of Article III.” *Mahtesian v. U.S. Off. Of Pers. Mgmt.*, 388 F. Supp. 2d 1047, 1050 (N.D. Cal. 2005) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Any person who submits a FOIA request has standing to bring a FOIA challenge in federal court on their own FOIA request if such request is denied in whole or in part. *Id.* at 1048 (citing *United States v. Richardson*, 418 U.S. 166, 204 (1974)). It is the FOIA plaintiff’s burden to establish that they are a proper party to challenge the FOIA request. *Id.* at 1050 (citing *United States v. Hays*, 515 U.S. 737, 743 (1995)). A person whose name does not appear on the request lacks standing to sue under FOIA, even if their interest was asserted in the request. *Id.* at 1049. Indeed, a person whose name does not appear on a request for records has not made a formal request for documents within the meaning of the statute. *Id.* Such a person, regardless of their personal interest in disclosure of the requested documents, has no right to receive either the documents or notice of an agency decision to withhold the documents. *Id.* (citing 32 C.F.R. §§ 701.7(a), (c)(1)–(3) (1992); 5 U.S.C.A. § 552(a)(6)(A)). Accordingly, a person whose name does not appear on a FOIA request for records cannot sue in district court when the agency refuses to release requested documents, because they have not administratively asserted a

right to receive them in the first place. *Id.* In other words, only the person whose name appears on a FOIA request has standing to sue if the request is denied, because they are the only one who has formally asserted a right to the documents. *Id.*

Here, certain redactions and withholdings in the FOIA response to JLN's request were originally made in previous FOIA responses. *See* Dkt. 35-1 at 2. JLN's FOIA request sought "[a]ny other FOIA requests and responses concerning complaints or allegations of antisemitism on campus." [Dkt. 21 at ¶ 29 (Request category no. 8)]. JLN does not have standing to challenge the redactions to, and withholding of, the documents produced in response to those earlier FOIA requests. *Mahtesian*, 388 F. Supp. 2d at 1049 (citing 32 C.F.R. §§ 701.7(a), (c)(1)–(3) (1992); 5 U.S.C.A. § 552(a)(6)(A)). Accordingly, summary judgment is **GRANTED** in favor of the DOE for certain redactions and withholdings in the FOIA response that were originally made in response to previous FOIA requests and produced here in response to JLN's request category number 8.

B. Exemption 5 withholdings

The Parties dispute the propriety of four specific withholdings under exemption 5. Exemption 5 provides that FOIA does not apply to "interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." *Lahr v. Nat'l Transp. Safety Bd.*, 569 F.3d 964, 979 (9th Cir. 2009) (quoting 5 U.S.C. § 552(b)(5)). Exemption 5 "shields 'those documents, and only those documents, normally privileged in the civil discovery context.'" *Assembly of State of Cal. v. U.S. Dep't of Com.*, 968 F.2d 916, 920 (9th Cir. 1992), *as amended on denial of reh'g* (Sept. 17, 1992) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975)). The privilege invoked here is the "deliberative process" privilege. [Dkt. 35 at 9]. "In light of the strong policy of the FOIA that the public is entitled to know what its government is doing and why, [E]xemption 5 is to be applied as narrowly as consistent with efficient Government operation." *Id.* (quoting *Maricopa Audubon Soc'y v. U.S. Forest Serv.*, 10 F.3d 1089, 1093 (9th Cir. 1997)).

Two elements are required for the deliberative process privilege under exemption 5 to apply: the document must be (1) predecisional and (2) deliberate. *Id.* "A 'predecisional' document is one prepared in order to assist an agency decisionmaker in arriving at his decision, and may include

recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.* at 979–80 (quoting *Assembly of State of Cal.*, 968 F.2d at 920). “A predecisional document is a part of the ‘deliberative process,’ if the disclosure of the materials would expose an agency’s decision-making process in such a way as to perform its functions.” *Id.*

On the other hand, a document reflects a final agency decision, and thus is not predecisional, and the reasons supporting it if “it communicates a policy on which the agency has settled.” *Am. C.L. Union Found. v. U.S. Dep’t of Just.*, No. 19-CV-00290-EMC, 2021 WL 4481784, at *5 (N.D. Cal. Sept. 30, 2021). Importantly, “[a] document is not final solely because nothing else follows it” because during agency deliberations “some ideas are discarded or simply languish.” *Id.* Instead, to determine if a document is final, Courts must evaluate “whether the agency treats the document as its final view on the matter.” *Id.* “Documents ‘are deliberative if they were prepared to help the agency formulate its position.’” *Id.* at *6 (quoting *United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 268 (2021)).

The first dispute centers around a purported “internal deliberative draft document containing the Department’s Office of Civil Rights’ (“OCR”) response to a question about what the Department is doing to implement Executive Order 13899.” Dkt. 35 at 10 (citing Dkt. 35-1 at 13–14).

Production: March 8, 2024, Interim Response (289 pages)

Page(s)	Date of Document	Exemption	Portion Withheld	Description of Redactions
56–59	Withheld pursuant to a FOIA exemption	(5)	In Full	Discovery privilege: The record is an internal deliberate draft document containing the Department’s Office of Civil Rights’ response to a question about what the Department is doing to implement Executive Order 13899. The record contains OCR’s edits and comments to drafting the response.

Dkt. 35-1 at 13.

1 With regard to this withheld document, JLN argues that the “DOE does not specify what
2 final decision these deliberations are in furtherance of, and when the final decision will be reached,
3 and DOE does not specify what harm would result from disclosure.” [Dkt. 36 at 15]. JLN asserts
4 that “there is no ‘reasonable foreseeability of harm’ in disclosing these records.” *Id.* (citation
5 omitted).

6 According to DOE’s *Vaughn* index, this withheld document “contains OCR’s edits and
7 comments to drafting the response.” Dkt. 36 at 10 (quoting Dkt. 35-1 at 13). DOE argues that this
8 document is deliberative “as it contains a draft response and comments thereto for future
9 implementation of an executive order[,]” and argues that this document is predecisional “because a
10 final response had not yet been issued and any potential agency policy was naturally being
11 developed, as evidenced by the comments and edits prior to the final response.” [Dkt. 35 at 10].

12 Draft documents that do not represent final policy are typically protected under exemption
13 5. *Am. C.L. Union Found.*, 2021 WL 4481784, at *6 (quoting *Sierra Club, Inc.*, 592 U.S. at 268).
14 Here, the presence of OCR’s edits and comments reflects the agency’s internal deliberation and
15 refinement process. *Id.* Such draft documents that do not constitute a final policy are exempt from
16 disclosure because they are deliberative. *Id.* (citation omitted). Because the document includes
17 comments and edits prior to the final response, the document at issue is predecisional. Accordingly,
18 the DOE has met its burden under exemption 5 with regard to pages 56–59 of the March 8, 2024,
19 Interim Response (reflected on page 13 of the *Vaughn* index). [Dkt. 35-1 at 13]. The Court
20 **GRANTS** summary judgment in favor of the DOE with regard to this withheld document.

21 The Parties’ second dispute with regard to exemption 5 centers around a draft version of a
22 policy document, a “Dear Colleague” letter on the topic of “Protecting Students from Discrimination
23 Based on Shared Ancestry and Ethnic Characteristics.” [Dkt. 36 at 15]. After the hearing on the
24 motion for summary judgment, the Parties stipulated to withdrawing the challenges to the
25 withholdings in these pages, with certain exceptions detailed below. [Dkt. 43]. The Court granted
26 that stipulation, and accordingly, the dispute is resolved as moot. [Dkt. 44].

27 The third and fourth disputes are materially identical. JLN seeks summary judgment that
28 the assertion of the deliberative process privilege under exemption 5 should not apply to redactions

of emails exchanged with people outside the agency, specifically pages 1–8 of the March 11, 2024, final production. [Dkt. 36 at 16]. The DOE argues that the *Vaughn* index for these pages dispels this contention. [Dkt. 37 at 4]. Quoting the *Vaughn* index, the DOE argues that “pages 1–8 of Defendant’s March 11, 2024, final production contained communications with the White House.” *Id.* The DOE argues that the White House is considered an agency for purposes of determining whether a communication is an interagency deliberation under FOIA. *Id.*

There appears to be no dispute between the Parties as to the propriety of redacting and withholding emails between the DOE and the White House, where all such emails were sent or received from a governmental email account. JLN does not challenge that such interagency emails would be covered by the deliberative process privilege on the record presented. The dispute here is focused on the question of whether any of the redacted or withheld emails include emails sent from accounts outside the government.

Exemption 5 generally applies only to internal government communications. *See* Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 3 (2001) (exemption 5 focuses on “communications” between agencies). Redactions of communications with people outside the government would therefore be improper under exemption 5 unless the government establishes that the communications are somehow part of an agency’s deliberative process (if that were possible under the facts of a given case). *See id.* JLN argues that the redaction of the email addresses makes it impossible to determine whether or not these are, in fact, interagency communications. [Dkt. 38 at 4]. JLN argues that the deliberative process privilege under exemption 5 would not apply to communications with persons who are outside the scope of the privilege, including emails sent to addresses that are outside the White House. [Dkt. 36 at 16].

It is the government’s burden to demonstrate that the deliberative process privilege applies. *See California Native Plant Soc’y v. U.S. E.P.A.*, 251 F.R.D. 408, 413 (N.D. Cal. 2008). Here, the government’s *Vaughn* index and arguments make the generalized assertion that these documents are emails between the DOE and the White House, without any specificity as to each document and without identifying the email addresses of the senders/recipients. The DOE has not sufficiently established what any of the challenged email addresses are. They may all be White House email

addresses and communications, or they may all be emails sent to and received from email accounts outside the government—there is no way to know based on the DOE’s submissions. The issue here is particularly focused because the DOE has the burden to segregate information in documents. *See id.* The DOE has not provided sufficient information in the *Vaughn* index or otherwise to establish that these emails are all within the scope of the privilege, because the redactions prevent determining whether these emails are to or from email accounts inside or outside the White House. As such, the DOE has not met its burden to demonstrate that the redactions as a whole are proper under exemption 5 because the DOE has provided insufficient information to demonstrate that the persons involved in all of the challenged communications are within the scope of the privilege.

Accordingly, the Court **GRANTS-IN-PART** JLN’s cross-motion for summary judgment solely with regard to those redacted emails (from pages 1–8 of the March 11, 2024, final production) that were sent or received from a non-governmental email address. The Court **DENIES-IN-PART** JLN’s cross-motion for summary judgment as to those redacted emails (from pages 1–8 of the March 11, 2024, final production) that were sent or received from a governmental email account or address (such as a White House email address).

C. Exemption 6 withholdings

The Parties dispute seven different redactions under exemption 6. “Exemption 6 states that FOIA does not apply to ‘personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.’” *Lahr*, 569 F.3d at 973 (quoting 5 U.S.C. § 552(b)(6)). “Exemptions 6 [] speak[s] of an ‘unwarranted’ invasion of personal privacy, not any invasion.” *Id.* at 973–74 (citing *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004); *U.S. Dep’t of Def. v. Fed. Labor Relations Auth. (FLRA)*, 510 U.S. 487, 494–95 (1994)). “So, to determine whether a record is properly withheld, we must balance the privacy interest protected by the exemptions against the public interest in government openness that would be served by disclosure.” *Id.* “Under Exemption 6, the concept of privacy not only encompasses that which is inherently private, but also includes an ‘individual’s control of information concerning his or her person.’” *Abhyanker v. United States Pat. & Trademark Off.*, No. 23-CV-00746-AMO, 2024 WL 3908107, at *9 (N.D. Cal. Aug. 19, 2024) (quoting *DOJ v. Reporters Comm. for Freedom of the*

1 *Press*, 489 U.S. 749, 763 (1989)).

2 To evaluate an exemption 6 dispute, requires a multi-step analysis. First, “a court must
3 determine whether the information at issue is contained within a personnel, medical, or ‘similar’
4 file.” *Id.* (citing 5 U.S.C. § 552(b)(6)). Second, “a court must determine whether there is a
5 significant privacy interest in the requested information.” *Id.* (citing *Multi Ag Media LLC. v. USDA*,
6 515 F.3d 1224, 1229 (D.C. Cir. 2008)). Third, “the court must evaluate the requester’s asserted
7 FOIA public interest in disclosure.” *Id.* (citing *Favish*, 541 U.S. at 160). “Finally, if there is a
8 significant privacy interest in nondisclosure and a FOIA public interest in disclosure, the court must
9 balance those competing interests to determine whether disclosure ‘would constitute a clearly
10 unwarranted invasion of personal privacy.’” *Id.* (quoting 5 U.S.C. § 552(b)(6)). “Because
11 Exemption 6 speaks of an ‘unwarranted’ invasion of personal privacy, ‘a court must balance the
12 public interest in disclosure against the interest Congress intended the [e]xemption to protect.” *Id.*
13 (quoting *FLRA*, 510 U.S. at 495).

14 The first three disputes under exemption 6 center around the redaction of another FOIA
15 requestor’s name and address; a redaction of a handwritten signature; and redactions surrounding
16 phone numbers. [Dkt. 35 at 11]. The DOE argues these three categories of redactions are proper
17 under exemption 6 because “[t]hese complainants shared deeply personal information regarding
18 their experiences with the understanding that their identities were confidential during the
19 investigation process. Information about their identities does not shed light on DOE’s performance
20 of its statutory duties, and reveals nothing about DOE’s own conduct.” *Id.* (citation omitted).

21 JLN’s opposition makes clear that “JLN has not sought any personal information identifying
22 specific complainants or witnesses.... Plaintiff does not challenge these redactions of names.” [Dkt.
23 36 at 16]. Further, JLN made clear in reply that “JLN is not seeking the complainants’ names or
24 their home addresses.” [Dkt. 38 at 7]. Because JLN does not oppose part of these categories of
25 redactions under exemption 6, the Court **GRANTS** summary judgment in favor of the DOE with
26 regard to any redactions under exemption 6 of other FOIA requestors’ names, addresses, phone
27 numbers, or any other personal identifying information of complainants or witnesses.

28 The fourth dispute centers around withholdings that include the identities and other

1 identifying information of individuals who complained of certain discriminatory behavior on
 2 university campuses (the “Complainants”). The DOE indicates that redactions of information
 3 regarding the complainants are proper because the complainants were entitled to confidentiality
 4 while their complaints were adjudicated. [Dkt. 35 at 11]. The DOE argues that “[t]hese
 5 complainants shared deeply personal information regarding their experiences with the
 6 understanding that their identities were confidential during the investigation process. Information
 7 about their identities does not shed light on DOE’s performance of its statutory duties, and reveals
 8 nothing about DOE’s own conduct.” *Id.*

9 JLN admits that it does not seek any personal information identifying specific complainants
 10 or witnesses. [Dkt. 36 at 16]. JLN challenges the alleged overbreadth of the redactions under
 11 exemption 6 because the redactions “offer little protection from the remote and attenuated risk of
 12 even identifying someone’s identity, let alone exposing them to harm” while allegedly
 13 “prohibit[ing] understanding of the substance of the complaint and the alleged discrimination.” *Id.*
 14 The only expressly identified redactions under exemption 6 discussed by JLN are with regard to
 15 page 3 of Exhibit E to JLN’s cross-motion for summary judgment. *Id.* (quoting Exhibit E, p. 61/162
 16 of the Second March 8, 2024, Production). In context, JLN’s complaint that these redactions
 17 “prohibit understanding of the substance of the complaint and the alleged discrimination” rings
 18 hollow:

19 With respect to Allegations 1 and 2, you alleged that the SPS’s offering the Program¹ and the
 20 Business School’s planning to offer Scholarship 1² during academic year 2022-2023 discriminates
 21 on the bases of race, color, and/or national origin. In support of the allegations, you alleged that
 22 the Program and Scholarship 1 are both designed to assist graduates of HBCUs and therefore
 23 violate Title VI by “exclude[ing] for the most part people who are not Black,” “Black people who
 24 don’t have Southern connections,” and “immigrant populations of Black people such as Africans,
 25 Latinos, Caribbeans, and European Blacks who are not likely to have attended a[n] HBCU.” You
 26 further stated that as a (b)(6); of the University (b)(6); and an (b)(6); (b)(7)(C) with (b)(6);
 27 (b)(6); (b)(7)(C) you feel excluded because the Program and Scholarship 1 were
 28 unavailable to you when you were enrolled in the University.

[Dkt. 36-6 at 3].

26 While JLN’s arguments focus solely on the redactions in one sentence, JLN ignores the
 27 remainder of the paragraph (and the remainder of the letter, most of which is unredacted), which
 28 sets forth in plain terms and in detail the substance of the complainant’s allegations of

1 discrimination. In balancing the privacy interests here against the alleged need for public disclosure,
2 the Court **FINDS** that JLN has wholly failed to demonstrate any need for the redacted private
3 identifying information of the complainant.

4 Because JLN argued that the redactions of this Exhibit E are emblematic of the alleged
5 overbreadth of the exemption 6 redactions, and because (as demonstrated) these redactions are
6 demonstrably *not* overbroad, the Court further **FINDS** that JLN has failed to show why summary
7 judgment should not be granted as to any other exemption 6 redactions. Accordingly, the Court
8 **GRANTS** summary judgment in favor of the DOE with regard to those exemption 6 redactions
9 relating to private identifying information of complainants and witnesses.

10 The fifth dispute here with regard to exemption 6 relates to the redaction of an email that
11 describes a social media post. [Dkt. 36 at 17]. This specific redaction was the subject of the Parties’
12 post-hearing meet and confer but remains unresolved. [Dkt. 43]. JLN argues that the email refers
13 to a social media post that was published and that there is no evidence that the privacy settings for
14 the author’s account were set to limit the viewership of the post. *Id.* at 2. Additionally, JLN argues
15 that the name of the individual who publicly posted the social media post is already known. *Id.*

16 In response, the DOE argues generally that an individual has a privacy interest in their social
17 media account. [Dkt. 37 at 5]. However, the DOE does not proffer any information or evidence
18 that this social media post was private or that the account settings at the time of posting limited
19 publication or access to the social media post. Further, the exhibit for this document states that this
20 social media post was emailed by the author to a government employee and that the author retweeted
21 the post. [Dkt. 36-5 at 2]. By its nature, “retweeting” indicates a further and potentially wider
22 publication of an original social media posting.

23 The DOE has the burden of establishing that exemption 6 justifiably applies to these
24 redactions. *See U.S. Dep’t of State v. Ray*, 502 U.S. 164, 172 (1991). The DOE has not met this
25 burden. To the contrary, a more than reasonable interpretation of the document is that the social
26 media post was public (as is common with social media posts and the default for the former Twitter
27 app). Withholding and redaction are not proper because there would be no “unwarranted invasion
28 of personal privacy.” *Lahr*, 569 F.3d at 973.

1 Because the DOE has not met its burden, the redaction under exemption 6 to the body of this
2 email regarding a social media post is not sufficiently supported. As such, the Court **GRANTS**
3 summary judgment in favor of JLN with regard to the exemption 6 redaction of the body text of this
4 email regarding a social media post.

5 A related, sixth dispute focuses not on the text of the email discussed above, but rather on
6 the redaction of the personal email account of the person who made the social media post. [Dkt. 38
7 at 6]. JLN argues that redacting the entirety of the email address is not justified, and that the domain
8 name of the email address should be unredacted to identify the organization with which the author
9 was affiliated. *Id.* The DOE argues in response that “[a]n individual has an inherent right to privacy
10 with their personal email address.” [Dkt. 37 at 5].

11 A personal email address is personally identifying information properly subject to
12 withholding. *See Transgender L. Ctr.*, 46 F.4th at 784 (withholding government employees’ email
13 addresses to prevent the disclosure of personally identifiable information). Beyond this, an
14 individual’s email address is a means for directly contacting someone, which (if publicly disclosed)
15 carries risks of harassment, so-called “spamming,” and generally uninvited communications of all
16 types. . Further, it is well-known that an individual’s email address is often linked in online
17 databases and search tools to other personal identifying information, such as addresses, phone
18 numbers, and family members’ identities.

19 JLN’s argument that partial unredaction to disclose the URL or domain name of this
20 individual’s email account would identify the organization they are affiliated with is based on pure
21 speculation. [Dkt. 38 at 6]. It is well known that people often use freely available email addresses
22 from general online email service providers (such as Gmail, Yahoo, AOL, and others), which do not
23 identify any person’s affiliation with their employer or organization. JLN simply assumes, without
24 basis or showing, that unredaction of the domain or URL of this email address would necessarily
25 disclose the person’s organization. Such speculation is insufficient grounds to challenge a redaction
26 based on exemption 6. Further, JLN has not persuasively explained why knowing the organization
27 with which this person is affiliated is relevant to the subject matter of the request, and certainly has
28 not shown how disclosure of such information outweighs the privacy interests here. Mere curiosity

1 about the possibility of uncovering a private individual's affiliation with an organization is not
2 sufficient.

3 Accordingly, the Court **GRANTS** summary judgment in favor of the DOE with regard to
4 the redaction based on exemption 6 as to this email address in its entirety.

5 The final exemption 6 dispute centers on JLN seeking disclosure of the names and titles of
6 university administrators. [Dkt. 36 at 17 (citing Dkt. 36-7)]. JLN argues that the DOE has
7 improperly redacted the names of university administrators in their handwritten signatures on
8 documents, based on confidentiality concerns. As a fallback position, JLN argues that, even if the
9 name were properly redacted, the title of the signatory should not be redacted under exemption 6.
10 [Dkt. 38 at 6].

11 In opposition, the DOE argues that the redactions of these signatures were applied in
12 response to a separate FOIA request that is not at issue in this action. [Dkt. 37 at 5]. As discussed
13 above, JLN lacks standing to argue that the exemptions do not apply to redactions made in response
14 to a separate FOIA request. Accordingly, the Court **GRANTS** summary judgment in favor of the
15 DOE with regard to the redactions of handwritten signatures under exemption 6.

16 **D. Exemption 7 Redactions and Withholdings**

17 Under exemption 7, the Parties raise disputes over three categories of redactions. “[L]aw
18 enforcement purposes[,]’ under Exemption 7[,] includes both civil and criminal matters within its
19 scope.” *Am. C.L. Union Found. of S. California v. United States Immigr. & Customs Enft*, No. 2:22-
20 CV-04760-SHK, 2024 WL 3370532, at *10 (C.D. Cal. July 8, 2024), *reconsideration denied*, 347
21 F.R.D. 518 (C.D. Cal. 2024) (quoting *Tax Analysts v. I.R.S.*, 294 F.3d 71, 77 (D.C. Cir. 2002)).
22 “Agencies that combine administrative and law enforcement functions and agencies whose principal
23 function is criminal law enforcement may both withhold records under Exemption 7.” *Id.* (citing
24 *Tax Analysts*, 294 F.3d at 77). “When a mixed-function agency withholds records, ‘a court must
25 scrutinize with some skepticism [whether] the particular purpose claimed for the disputed
26 documents’ was, in fact, related to law enforcement purposes.” *Id.* “The court focuses ‘on how and
27 under what circumstances the requested files were compiled . . . , and whether the files sought related
28 to anything that can fairly be characterized as an enforcement proceeding.’” *Id.* (quoting *Jefferson*

1 *v. DOJ, Office of Professional Responsibility*, 284 F.3d 172, 177 (D.C. Cir. 2002)). “The agency
2 must show: (1) ‘the investigatory activity that gave rise to the documents is related to the
3 enforcement of federal laws,’ and (2) ‘there is a rational nexus between the investigation at issue
4 and the agency’s law enforcement duties.’” *Id.*

5 Here, the Parties do not dispute that the law enforcement exemption can apply to the DOE.
6 *Compare* Dkt. 37 at 6, *with* Dkt. 36. There appears to be no dispute that the DOE Office of Civil
7 Rights serves as a law enforcement agency enforcing certain civil rights laws. [Dkt. 35 at 12; Dkt.
8 36 at 20 (JLN admitting that “to the extent DOE is a law enforcement agency, it is at most a ‘mixed
9 function agency’”)]. As such, the exemption 7 disputes here are addressed to the breadth of specific
10 redactions.

11 The first exemption 7 dispute centers on redactions that withhold information on underlying
12 incidents involving certain complainants. The DOE asserts exemption 7(A) with regard to these
13 redactions. Exemption 7(A) protects from disclosure information that “could reasonably be
14 expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

15 Here, JLN argues that the “DOE cannot establish that disclosure of the records could
16 reasonably be expected to interfere with enforcement proceedings.” [Dkt. 36 at 20]. The specific
17 redactions identified by JLN as allegedly improper are with regard to certain pages of Exhibit G
18 [Dkt. 36-8] to JLN’s cross-motion. [Dkt. 36 at 21 (citing “Exhibit G, p. 19–23, 46–53”)]. JLN’s
19 argument regarding this Exhibit G is confusing because Exhibit G only consists of a thirteen-page
20 document, and there are no pages “19–23” or “46–53” marked or identified anywhere on this
21 document. *See* [Dkt. 36-8]. It appears that these are the page numbers of DOE’s December 2023
22 document production, but JLN has not correlated those page numbers with the pages of Exhibit G
23 as submitted to the Court. Accordingly, that procedural failure undercuts and weakens JLN’s
24 arguments for the simple reason that the Court is unsure what pages of Exhibit G are actually
25 challenged. A detailed examination of Exhibit G does not support JLN’s assertions. This Exhibit
26 G consists in part of several pages of a detailed letter involving a university investigation into alleged
27 discrimination, where the details of the underlying incident are *not* redacted in large part. *Id.* at 2–
28 4. JLN does not explain why the unredacted information is insufficient to provide adequate

1 information as to the complaint. Further, this Exhibit G includes an email that discusses a
 2 “disturbing email” and “threats” to a complainant at the university in sufficient detail to describe
 3 the underlying incident without disclosing personally identifying information of the complainant.
 4 *Id.* at 5–6. To the extent the remaining pages of Exhibit G are redacted admittedly in large part,
 5 JLN’s argument appears to be focused on the supporting declaration from the DOE (discussed
 6 below). In sum, JLN’s arguments overlook and ignore the unredacted portions of this exhibit and
 7 fail to explain why the disclosed information is insufficient (and fail to explain why the redactions
 8 under exemption 7(A) are improper, particularly in light of the text stating that a complainant
 9 received a disturbing email).

10 The DOE argues that the redactions are proper under exemption 7(A) because releasing the
 11 information “could reasonably be expected to interfere with enforcement proceedings.” [Dkt. 37 at
 12 6]. The DOE further argues that the redacted information describes alleged actions that led to
 13 investigations, and the facts (if disclosed) would identify the parties involved in the investigations.
 14 *Id.* In support of the redactions, the DOE submitted a declaration from Heather Gunnarson, a
 15 Director in the DOE Office for Civil Rights. [Dkt. 35-2]. In her role, Gunnarson oversees the
 16 administration of all FOIA requests assigned to the Office for Civil Rights. *Id.*

17 JLN challenges Gunnarson’s declaration, arguing that it fails to identify specific
 18 proceedings, does not clarify whether Gunnarson is familiar with all of DOE’s ongoing cases, and
 19 overbroadly asserts that the redacted proceedings are either pending or prospective without
 20 providing sufficient detail as to each. [Dkt. 36 at 20].

21 Agency FOIA affidavits are presumed to be made in good faith and should be accorded
 22 substantial weight. *Ecological Rts. Found.*, 607 F. Supp. 3d at 993. JLN provides no basis to
 23 conclude that the Gunnarson Declaration should not be given substantial weight, nor any reason to
 24 rebut the presumption of good faith. Ms. Gunnarson expressly states under oath that the “records
 25 that contained redactions and/or withholdings pursuant to the FOIA exemption 7(A) were compiled
 26 for the purpose of enforcing one of the several Civil Rights laws that prohibit discrimination in
 27 programs or activities that receive federal financial assistance from the DOE.” [Dkt. 35-2 at ¶ 10].
 28 Additionally, Gunnarson indicates that “law enforcement proceeding(s) involved in the records that

1 contained redactions and/or withholdings pursuant to the FOIA exemption 7(A) are either pending
2 and/or prospective.” *Id.* at ¶ 11. Gunnarson further avers that “[r]elease of the information withheld
3 pursuant to the FOIA exemption 7(A) could jeopardize OCR’s enforcement proceedings.” *Id.* at 12.

4 The Gunnarson Declaration satisfies the standard for specifying the potential harm that could
5 occur from disclosure of the exemption 7(A) information: “release could put victims and witnesses
6 in danger of retaliation and could prevent others from disclosing and/or filing complaints for fear
7 their information will be exposed. Parties could stonewall OCR’s investigation. Those involved in
8 the discrimination may destroy, alter, or fabricate evidence. And release of the information could
9 disclose OCR’s investigatory strategies.” *Id.*

10 JLN’s conclusory argument that “[i]t is difficult to see how the redactions address the safety
11 of victims and witnesses” provides no basis to rebut the presumption of good faith attaching to the
12 Gunnarson Declaration. [Dkt. 36 at 21]. Indeed, as discussed above, the unredacted portion of
13 Exhibit G coupled with the Gunnarson Declaration demonstrates precisely that releasing the
14 unredacted information could put victims and witnesses in danger of retaliation, because that risk
15 appears to have arisen with regard to a complainant at the university discussed in Exhibit G when
16 (apparently) the university lifted a previous “no contact order”. [Dkt. 36-8 at 5].

17 In addition to Exhibit G (discussed above), the only other specific document challenged by
18 JLN is Exhibit H to JLN’s cross-motion. JLN argues in a single sentence that the redactions to this
19 Exhibit H are not supported under exemption 7 because, based on the unredacted portion, JLN
20 argues that “[t]his email appears to be concerning an educational conference, not a complaint, so it
21 could not likely interfere with law enforcement proceedings.” [Dkt. 36 at 21 (citing Dkt. 36-9)].
22 JLN’s arguments myopically ignore the remainder of the unredacted portion of Exhibit H. Contrary
23 to JLN’s representation, the document does **not** refer solely to an educational conference. [Dkt. 36
24 at 21]. Rather, the document is an email between a university counsel and an official of the DOE
25 with the subject “OCR Resolution Agreement in Matter 11-19-2215” and the body text states that
26 the author is “writing regarding the resolution agreement we executed with OCR at the end of last
27 year with respect to the Gaza conference.” [Dkt. 36-9 at 2]. On its face, the document references
28 what appears to be an investigation docket or file number (“22-19-2215”) and references an

1 agreement with the enforcement agency (OCR) to “resolve” an issue between OCR and that
 2 university. *Id.* Just because that issue was “with respect to the Gaza conference” (which is not
 3 identified as an “educational conference” contrary to JLN’s assertion) does not mean the document
 4 only concerns the conference as JLN’s cramped reading of the text asserts. Coupled with the
 5 Gunnarson Declaration, the unredacted text of Exhibit H demonstrably shows that the document is
 6 discussing an OCR investigation and efforts to resolve it by a formal resolution agreement with the
 7 university. JLN’s characterization of this Exhibit H falls apart upon simple examination, and such
 8 borderline misrepresentation puts JLN’s counsel’s credibility at serious risk.

9 Because JLN relies on Exhibit H as exemplary for its challenge to the remainder of the
 10 exemption 7 redactions, and because as detailed above JLN’s arguments in this regard and with
 11 regard to Exhibit G are meritless, the Court **GRANTS** summary judgment in favor of the DOE with
 12 regard to all the exemption 7(A) redactions and withholdings.

13 The second exemption 7 dispute centers on whether releasing certain information currently
 14 withheld under exemption 7 would, when combined with other disclosed details, cumulatively
 15 reveal the identities of complainants protected under exemption 6. [Dkt. 37 at 4–5]. However, this
 16 issue is mooted as the Court granted summary judgment in favor of the DOE pursuant to exemption
 17 7.

18 Finally, the DOE has established that the redactions to JLN’s Exhibit H resulted from the
 19 DOE’s response to a separate FOIA request that is not at issue in the action. [Dkt. 37 at 7]. As
 20 explained above, JLN lacks standing to argue that the exemptions do not apply to redactions made
 21 in response to a separate FOIA request. Accordingly, for this additional reason the Court **GRANTS**
 22 summary judgment in favor of the DOE as to the redactions under exemption 7(A) in Exhibit H
 23 [Dkt. 36-9].

24 **II. JLN’S “PATTERN AND PRACTICE” CAUSE OF ACTION**

25 JLN alleges that Defendant has engaged in a pattern and practice of failing to timely issue
 26 determinations in response to FOIA requests. [Dkt. 36 at 22]. To bring a pattern and practice claim,
 27 a FOIA plaintiff must first establish Article III standing by demonstrating: “(1) the agency’s FOIA
 28 violation was not merely an isolated incident, (2) the plaintiff was personally harmed by the alleged

1 policy, and (3) the plaintiff himself has a sufficient likelihood of future harm by the policy or
 2 practice.” *Hajro v. U.S. Citizenship & Immigr. Servs.*, 811 F.3d 1086, 1103 (9th Cir. 2016) (citing
 3 *Lujan*, 504 U.S. at 563; *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983); *Long v. U.S. I.R.S.*,
 4 693 F.2d 907, 909–10 (9th Cir. 1982)).

5 Here, JLN argues that it is entitled to summary judgment because the DOE failed to timely
 6 respond to the FOIA request at issue here. [Dkt. 36 at 22]. Specifically, JLN characterizes the
 7 September 28, 2023, DOE letter as “merely a ‘status update’” and argues that it does not count as a
 8 “proper response.” *Id.*

9 The DOE argues this characterization is incorrect, because JLN “relies on a misplaced
 10 interpretation of determination in support of its argument that Defendant was untimely in its
 11 response.” [Dkt. 35 at 13 (citing *Citizens for Resp. & Ethics in Washington v. Fed. Election Com’n*,
 12 711 F.3d 180, 188 (D.C. Cir. 2013))]. The DOE further argues that “[a] determination as to whether
 13 the agency will comply with the FOIA request is not the same as the production of documents in
 14 response to that request.” *Id.* The DOE asserts that its response letter from September 2024
 15 constitutes a legally proper response and that therefore JLN lacks Article III standing to assert a
 16 pattern and practice claim.

17 The law recognizes “a distinction exists between a ‘determination’ and subsequent
 18 production.” *Citizens for Resp. & Ethics in Washington*, 711 F.3d at 188. An agency need only
 19 “process a FOIA request and make a ‘determination’” within twenty to thirty working days,
 20 depending on the circumstances. *Id.* Here, JLN’s FOIA request was received on August 30, 2023,
 21 and the DOE provided its determination on September 28, 2023, which is twenty working days later.
 22 Dkt. 35-4, ¶¶ 7–9; Dkt. 35-10, at 2–3. Under applicable legal standards, the DOE September 28,
 23 2023, letter suffices as a determination for purposes of responding to a FOIA request. Because the
 24 law recognizes that the date of actual production of documents is not the date for a “determination,”
 25 JLN’s arguments that the DOE violated the statute because the agency took several months to
 26 process and produce documents on a rolling basis are legally unsound. Because there is no dispute
 27 that the DOE responded to JLN within the required twenty days, and because that response qualifies
 28 as a determination, JLN lacks standing to assert a pattern and practice claim against the DOE.

Accordingly, the Court **GRANTS** summary judgment in favor of the DOE on JLN's pattern and practice cause of action.

III. DOE'S ALLEGED FAILURE TO MEET THE STATUTORY DEADLINE

JLN asserts two grounds on which the DOE allegedly failed to meet the statutory deadline in responding to the FOIA requests here. First, JLN argues that the DOE failed to make the required determination within the statutory deadline. Second, JLN argues that the DOE failed to conduct a reasonable search for documents in response to the FOIA request. The Court addresses each of these grounds *seriatim*.

A. WHETHER THE DOE FAILED TO MAKE A DETERMINATION WITHIN THE DEADLINE

In the Amended Complaint, JLN alleges that the DOE failed to make a determination with respect to JLN's FOIA request within the statutory deadline. [Dkt. 21 at p. 9 (First Cause of Action); Dkt. 36 at 12]. Under 5 U.S.C. § 552(a)(6)(A), "[e]ach agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall (i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request[.]" The statute further requires that the agency "shall immediately notify the person making such request of such determination and the reasons therefor" and shall notify the requestor of other information regarding their rights. *Id.* at § 552(a)(6)(A)(i).

As discussed above with regard to the "pattern and practice" cause of action, the Parties do not dispute that the DOE sent a response letter on September 28, 2023, to JLN within the twenty-day deadline. JLN argues that the September 28, 2023, letter does not qualify as a "determination" without citation to any binding or persuasive law. [Dkt. 36 at 11-12]. By its terms, § 552(a)(6)(A) requires the agency to determine "whether to comply with such [FOIA] request" and notify the requestor. The September 2023 letter expressly states that JLN's FOIA "request was forwarded to the appropriate officer(s) within the Department *to conduct a search for any responsive records. At this time, your request is still being processed.*" [Dkt. 36-3 at 2 (emphasis added)]. That notification states expressly that the request was forwarded to personnel "to conduct a search" for documents.

JLN asserts without legal support that the letter “does not state any information that would allow Plaintiff to determine whether DOE will produce documents and when.” [Dkt. 36 at 13; *see also* Dkt. 38 at 2 (“DOE does not state that it will produce documents.... Defendant not only failed to specify that documents would be produced, it also failed to specify any date that the request would be completed[.]”). That is not the standard required under the statute – the agency is **not** required to provide a notice of a determination on “whether” the agency “**will** produce documents **and when**.” The statute by its terms merely requires the agency to determine whether or not it will comply with the request, and so notify the requestor. Telling JLN that the DOE forwarded the request to personnel to conduct a search for responsive documents constitutes a notification that the DOE is, in fact, complying with the request. Making a search for documents is one of the first steps in complying with a request. If the DOE had determined not to comply with the request, it would have refused to forward the request to anyone to search for any documents.

At the time the search starts, the agency has no way to know for certain whether any responsive documents exist and thus no way to know whether any documents “will” be produced or “when”—and Section 552(a)(6)(A) does not impose that requirement. JLN’s demand that a notification letter state unequivocally that documents “will” be produced and “specify any date that the request would be completed” is outside the statute and is invented from whole cloth by JLN. JLN cites no case law which requires an agency to presciently predict that responsive documents will be found and will be produced, and JLN cites no legal support in either the statute or case law requiring “magic language” to adequately communicate the determination required by the statute. As with JLN’s crimped interpretation of an exhibit (discussed above), JLN’s redrafting of the statute, coupled with its crimped interpretation of the September 2023 letter, is legally and factually unsupported.

Finally, on reply JLN argues for the first time that the September 2023 letter was somehow deficient because the “response did not give the instructions for appeal.” [Dkt. 38 at 3]. Again, JLN cites no law to support this argument. The statute does **not** require an agency to provide any “instructions for appeal” when the agency has determined it will comply with the FOIA request. *See* 5 U.S.C. § 552(a)(6)(A)(i)(I)-(II). The statute only requires notification of certain specific

1 information regarding the requestor’s ***right to appeal*** (and not “instructions for appeal”) ***only*** “in
 2 the case of an ***adverse determination***.” *See id.* at § 552(a)(6)(A)(i)(III). Here, there was no “adverse
 3 determination” and JLN provides no factual or legal support for interpreting the September 2023
 4 letter as communicating a determination not to comply with the FOIA request. Because there was
 5 no “adverse determination” here, the DOE’s letter was not required to provide notice of the right to
 6 appeal or any other matters in subsection (III) of the statute. Indeed, the fact that the September 28,
 7 2023, letter omitted any discussion of a right to appeal (or any other matters required by subsection
 8 (III) of the statute) is further indication that the DOE made a positive determination to comply with
 9 the FOIA request and was so notifying JLN. JLN’s attempt to confusingly inject notice of the right
 10 to appeal in a situation where the agency had determined to comply with the request by starting the
 11 search for documents is legal error, and both misreads and misapplies the statute.

12 Accordingly, the Court **FINDS** that the September 28, 2023, letter notified JLN of the DOE’s
 13 determination to comply with the FOIA request, and thus satisfied the “determination” and
 14 “notification” requirements of Section 552(a)(6)(A).

15 The DOE further argues that JLN’s cause of action here has been rendered moot. “[T]he
 16 production of all nonexempt material, ‘however belatedly,’ moots FOIA claims.” *Papa v. United*
 17 *States*, 281 F.3d 1004, 1013 (9th Cir. 2002) (citing *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir.
 18 1982); 5 U.S.C. § 552). Here, the DOE provided its final response on March 11, 2024, and thus
 19 finished its production of all nonexempt material. [Dkt. 21 at ¶ 38]. That final response predates
 20 the Amended Complaint (the operative complaint in this matter) by about three weeks. *Compare*
 21 *id.*, with [Dkt. 21 (filed April 2, 2024)]. Under *Papa*, the DOE’s final response moots JLN’s claim
 22 that the agency failed to provide a substantive response to a FOIA request. *Papa*, 281 F.3d at 1013
 23 (citing *Perry*, 684 F.2d at 125; 5 U.S.C. § 552). JLN’s sole argument that *Papa* is relied on by the
 24 DOE to argue “timeliness” of the notification is a misreading of the DOE’s briefing. [Dkt. 38 at 2].
 25 And JLN’s recasting of the DOE’s argument to state that the DOE is relying on the Amended
 26 Complaint as mooting the cause of action, dkt. 38 at 4, is a further misreading of the DOE’s
 27 argument and fails to distinguish *Papa*’s application here. The DOE relies on its final response and
 28 production of final documents as the basis for mootness. JLN fails to distinguish the application of

Papa's mootness doctrine here as a matter of law.

Accordingly, the Court **GRANTS** summary judgment in favor of the DOE on the First Cause of Action (Failure to Comply with Statutory Deadlines) on the grounds that the DOE satisfied the "determination" and "notification" requirements of § 552(a)(6)(A) and alternatively on the grounds that this cause of action is moot.

B. WHETHER THE DOE FAILED TO CONDUCT A REASONABLE SEARCH

JLN cross-moves for summary judgment with respect to the First Cause of Action on the grounds that the DOE failed to conduct a reasonable search in response to the FOIA request. [Dkt. 36 at 13]. To comply with a FOIA request, an agency must conduct a reasonable search for responsive records. *Hamdan*, 797 F.3d at 770. JLN complains that, "[n]o description of the search has been provided to allow the Court to determine whether the search was reasonable. DOE does not explain where the records are located and what facilities were searched. DOE does not explain its keywords used or search methodology." *Id.*

The DOE argues that this request for summary judgment should be denied as a matter of law because the "operative Amended Complaint does not allege that Defendant conducted an inadequate search." [Dkt. 37 at 9].

The Court agrees and denies JLN's cross-motion for summary judgment on the First Cause of Action on the asserted grounds. After carefully reviewing the operative Amended Complaint, the Court finds there is no pleading or mention in the First Cause of Action discussing or mentioning failure to perform a reasonable search. [Dkt. 21 at ¶¶ 40–46]. The First Cause of Action is directed to the timeliness of the determination issue discussed above. Under the notice pleading standard, the First Cause of Action as pled does not give the DOE notice that "reasonableness of the search" is at issue. Had the DOE known that this issue was part of this cause of action, the DOE could have moved for summary judgment on this issue as well as discussed below. JLN did not adequately plead that the DOE failed to conduct a reasonable search as a basis for its claim that there was a failure to comply with statutory deadlines. Denying summary judgment is appropriate if the complaint does not allege the cause of action or the facts supporting the cause of action. *See Pickern*

1 *v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 969 (9th Cir. 2006) (affirming the district court's denial
2 of summary judgment when plaintiff failed to plead certain facts in the amended complaint). As the
3 Plaintiff and moving party here, JLN has the burden to show that there are no genuine disputes of
4 material facts and that it is entitled to judgment as a matter of law on this cause of action. Fed. R.
5 Civ. P. 56(a). By failing to plead that reasonableness of the search was even an issue for the First
6 Cause of Action, JLN has failed to show that any facts (much less disputes of fact) as to the
7 reasonableness of the search are material in any legally relevant way to the First Cause of Action as
8 pled.

9 The DOE further argues that this cross-motion for summary judgment should be denied
10 because JLN affirmatively waived this theory as to this Cause of Action. [Dkt. 37 at 9]. The original
11 Complaint did expressly request, as relief that the DOE be ordered to conduct a reasonable search
12 in response to the FOIA request. [Dkt. 1 at 11]. The currently operative Amended Complaint
13 dropped that requested relief. [Dkt. 21 at 12–13]. The DOE explains that, between the dates of the
14 original Complaint and the Amended Complaint, the Parties negotiated and came to express
15 agreement on search terms to be used to search for responsive documents. [Dkt. 37-2 (emails
16 between counsel setting forth and reaching agreement on multiple search terms to be used)]. This
17 explains why, by the time of the Amended Complaint, JLN removed the language requesting the
18 Court to order the DOE to conduct a reasonable search. As the moving party here, JLN has the
19 burden to show that there are no genuine disputes of material facts and that it is entitled to judgment
20 as a matter of law on this cause of action. At a minimum, the DOE has provided substantial
21 uncontroverted evidence which raises a genuine dispute on JLN's contention that the search was not
22 reasonable, and summary judgment is inappropriate for this reason alone. JLN mistakenly shifts the
23 burden to the DOE to establish in opposing summary judgment that the search was reasonable. To
24 be entitled to its cross-motion for summary judgment, JLN (not the DOE) has the burden to show
25 no genuine dispute that the search was unreasonable. JLN failed to make this showing.

26 Further, a party that agrees to a course of action has waived the right to complain that the
27 agreed-upon course of action is unreasonable. Here, JLN agreed to the search terms and has thus
28 waived arguing that the search terms are unreasonable. Analogously, JLN expressly represented to

1 the DOE that JLN agreed to the search terms used here, and in reliance on that representation, the
2 DOE used those search terms. Similar to the concept of waiver, under the facts presented JLN is
3 also estopped from asserting that the agreed-upon search terms are unreasonable. In light of the
4 uncontroverted evidence presented by the DOE, the Court **FINDS** that JLN waived (or is estopped
5 from) arguing that the reasonableness of the search is grounds for JLN's cross-motion for summary
6 judgment on the First Cause of Action. Based on the uncontroverted evidence, it is apparent that,
7 had the DOE known that JLN intended to pursue this unpled theory, the DOE could have moved for
8 partial summary judgment on the First Cause of Action with regard to the reasonableness of the
9 search.

10 The Court is troubled that this appears to be yet another instance in connection with these
11 motions where JLN's counsel's manner of litigation has put its credibility and professionalism in
12 serious question. In the briefing, JLN represented flatly to the Court that "No description of the
13 search has been provided" and that "DOE does not explain its keywords used or search
14 methodology." [Dkt. 36 at 13]. In opposition, the DOE provided a description of the search,
15 explained the agreed-upon keywords used, and explained the methodology of the search would be
16 to use these search terms. JLN knew all this prior to filing its cross-motion for summary judgment.
17 After being confronted by the DOE's opposition brief and the evidence of the agreement between
18 counsel on the search terms, JLN modified its argument to mean that the DOE was required to
19 submit evidence to the Court (and not to JLN) describing the search terms "actually" used, that JLN
20 attempts to distinguish from search terms which were "agreed" to be used. [Dkt. 38 at 3]. JLN
21 ignores the fact that the DOE's counsel expressly stated under Rule 11 in its brief that the agreed-
22 upon "search parameters" were "*used* to locate responsive documents." [Dkt. 37 at 9 (emphasis
23 added)]. JLN's counsel negotiated and knew the search terms to be used. During the discovery and
24 disclosure period, JLN's counsel had every opportunity to confirm any suspicion whether the DOE
25 was failing to or refusing to use the agreed-upon search terms. JLN dropped a request for relief in
26 the Amended Complaint regarding the reasonableness of the search. JLN provided no basis to
27 believe or suspect that counsel for the DOE, having agreed to the search terms, would then
28 surreptitiously fail to use the agreed-upon search terms. Despite all this, counsel for JLN represented

1 to the Court that “no description” of the search was provided and that the DOE provided no
 2 explanation of the keywords used. JLN’s counsel omitted telling the Court that JLN’s counsel knew
 3 that search terms had been negotiated, knew what those search terms were, and knew that JLN
 4 agreed to those search terms with the DOE’s counsel. Counsel for JLN is on notice that any further
 5 misrepresentations of fact or omissions of material fact in submissions to the Court may result in an
 6 Order to Show Cause, including potential sanctions.

7 Accordingly, the Court **DENIES WITH PREJUDICE** JLN’s cross-motion for summary
 8 judgment on the First Cause of Action (Failure to Comply with Statutory Deadlines) on the grounds
 9 of lack of reasonable search by the DOE for all the reasons stated herein.

10 **IV. DOE’S FAILURE TO REASONABLY SEGREGATE**

11 JLN seeks summary judgment on its Fourth Cause of Action that the DOE purportedly failed
 12 to reasonably segregate documents. [Dkt. 21 at 12 (Fourth Cause of Action); Dkt. 36 at 21]. “FOIA
 13 provides that any ‘reasonably segregable portion of a record shall be provided to any person
 14 requesting such record after deletion of the portions which are exempt under this subsection.’”
 15 *Hamdan*, 797 F.3d at 778–79 (quoting 5 U.S.C. § 552(b)). The Ninth Circuit has held that “[i]t is
 16 reversible error for the district court ‘to simply approve the withholding of an entire document
 17 without entering a finding on segregability, or the lack thereof,’ with respect to that document.” *Id.*
 18 (quoting *Wiener v. F.B.I.*, 943 F.2d 972, 988 (9th Cir. 1991)). “The burden is on the agency to
 19 establish that all reasonably segregable portions of a document have been segregated and disclosed.”
 20 *Id.* (quoting *Pac. Fisheries, Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008)). “The agency
 21 can meet this burden by providing the district court with a reasonably detailed description of the
 22 withheld material and ‘alleging facts sufficient to establish an exemption.’” *Id.*

23 Courts “may rely on an agency’s declaration in making its segregability determination.” *Id.*
 24 “Agency affidavits that are sufficiently detailed are presumed to be made in good faith and may be
 25 taken at face value.” *Id.* (citing *Hunt v. CIA*, 981 F.2d 1116, 1119 (9th Cir. 1992)). “In short, a
 26 district court is not required to conduct an independent in camera review of each withholding unless
 27 an agency declaration lacks sufficient detail or bears some indicia of bad faith by the agency.” *Id.*

28 Here, the basis of JLN’s cross-motion for summary judgment primarily rests on how

1 “[m]any redactions covered entire pages, and others were not narrowly tailored, covering entire
2 paragraphs.” [Dkt. 36 at 21]. The Court disagrees with such characterizations and notes that JLN’s
3 arguments do not rebut the factual showings in the DOE’s declarations submitted on these motions.

4 The DOE’s declarations are sufficiently detailed such that this Court can and will take them
5 at face value. The DOE declarations specify the withheld documents individually, offer a detailed
6 explanation of the withheld material, and identify the applicable exemption (or exemptions) for
7 each. As discussed specifically with regard to the challenged exemptions above, the Gunnarson
8 Declaration is sufficiently detailed and JLN provides no basis to rebut the presumption of good faith
9 attaching to that declaration. [Dkt. 36-2]. Similarly, the other declaration relied on by the DOE,
10 submitted by Robert Wehausen (Director of Operations for the DOE), provides details on the meet
11 and confers and communications between counsel to clarify the scope of the requests, the date of
12 and numbers of documents provided during the process of responding to the FOIA request, and
13 explains that redactions and withholdings in the November 26, 2023, production were applied in
14 response to other, separate FOIA requests unless otherwise specified in the *Vaughn* index. [Dkt.
15 36-4].

16 JLN recites no reason why the Court should refuse to take the DOE’s declarations at face
17 value. Indeed, there is ample evidence that the DOE acted in good faith in its dealings with JLN
18 and the Court, including multiple meet and confers, reviewing materials for release at Plaintiff’s
19 request, and closely scrutinizing what it releases. As the party cross-moving for summary judgment
20 here, JLN has the burden to establish there are no genuine issues of material fact and that JLN is
21 entitled to judgment as a matter of law on the alleged failure to reasonably segregate. In light of the
22 declarations of the witnesses submitted by the DOE, and in light of the *Vaughn* index (which further
23 explains the redactions and segregation of information), and in light of the totality of the
24 circumstances surrounding the DOE’s processing of documents in response to the request (including
25 the Court’s review of redactions on specific documents complained about by JLN as discussed
26 herein), the Court **FINDS** that JLN has not met its burden to establish there are no genuine issues
27 of material fact and that it is entitled to judgment as a matter of law on the reasonable segregation
28 issue.

1 Accordingly, the Court **DENIES WITH PREJUDICE** JLN's cross-motion for summary
2 judgment on the Fourth Cause of Action (Failure to Reasonably Segregate) for all the reasons stated
3 herein.

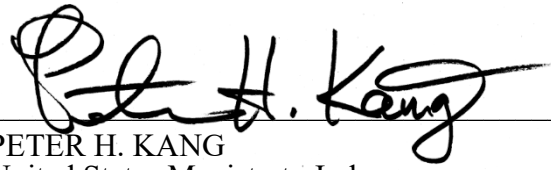
4 **CONCLUSION**

5 Accordingly, for the reasons discussed herein and in light of the applicable legal standards,
6 the Court **GRANTS-IN-PART** and **DENIES-IN-PART** the DOE's motion for summary judgment
7 and JLN's cross-motion for summary judgment as detailed herein.

8 This **RESOLVES** Dkts. 35 and 36.

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10 **IT IS SO ORDERED.**

11 Dated: March 31, 2025

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13 PETER H. KANG
14 United States Magistrate Judge
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